General Assembly Third Committee

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Item 143:
Administration of justice at the United Nations

Statement delivered by

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Delegation of the European Union to the United Nations

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Mr. Chairman,

I have the honour to speak on behalf of the Member States of the European Union.

The Candidate Countries the former Yugoslav Republic of Macedonia[*], Montenegro[*], Iceland[+]and Serbia[*], the countries of the Stabilisation and Association Process and potential candidates Albania and Bosnia and Herzegovina, as well asArmenia, and Georgia,align themselves with this statement.

We continue to attach great importance to the functioning of the system of administration of justice at the United Nations. The progress made since 2009 represents a collective achievement and should be commended.

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[*] The former Yugoslav Republic of Macedonia, Montenegro and Serbia continue to be part of the Stabilisation and Association Process.

[+]Iceland continues to be a member of EFTA and the European Economic Area.

We take note with appreciation of the two recent reports by the Secretary-General on the administration of justice at the United Nations (A/68/346), on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/68/158), as well as thereport by the Internal Justice Council (A/68/306). The processing of cases through all phases of both the informal and formal systems continues to demonstrate a marked improvement in efficiency and fairness of procedure. However, some challenges still remain to be addressed.

We appreciate the fact that the Internal Justice Council managed to providedetailed responses to the specific requests set out in General Assembly resolution 67/241, despite the significant delay that occurred in constituting the Council. Its role is key in promoting independence, professionalism and accountability in the system of administration of justice, and we concur with the Council's view that its members shall discharge duties entrusted to them in complete independence.

The informal resolution of conflicts is a crucial element of the system of administration of justice, helping to avoid expensive and time-consuming litigation. It minimizes the negative impact of conflicts and mitigates associated risks.We welcome the activities of the Office of the United Nations Ombudsman and Mediation Services in this regard and support its efforts in advancing and encouraging the use of informal conflict resolution.

Concerning the new Management Evaluation, we note with appreciation the high number of complaints disposed of every year. We commend the MEU for the work it has done, despite the very tight timelines established for delivery of decisions and recommendations. Looking at the figures we welcome that ultimately less than one third of all requests are formally decided upon, whereas the rest gets dealt with otherwise. The fact that out of all decisions by the MEU which are then subjected to an appeal before the UNDT a large majority were confirmed or partly confirmed by the Tribunal is indeed a good indicator of the accuracy of the decisions taken by the Unit. We also welcome that the MEU systematically tries to identify the requests that have potential of settlement through informal resolution, and attempts to settle those cases in such manner whenever appropriate.

Furthermore, other measures that help directly or indirectly to avert litigation should not be underestimated. This relates, *inter alia*, totherole of institutionalization of good practicesby the Management Evaluation Unit and jurisprudence of the Tribunals inshaping administrative and management practices, as well as the role of summary or preventive legal advice from the Office or Staff Legal Assistance in stopping unmeritorious claims at the outset.

Concerning the UNDT we note that the number of new cases seems to be stabilizing and that the number of judgments delivered in the three locations is also leveling out, at around 220 per year, some significant differences between the duty stations notwithstanding. We are pleased that this brings the time needed for deciding a case at the first instance down to roughly 12 months – whereas it took up to five years to decide under the old system. The Tribunal needs tobe able to

keep up this level of success, in order to avoid a significant increase in the length of time needed to conclude a case.

We also note with appreciation the investments made over the past year into improving the courtrooms and other facilities – as requested by the GA - which are supposed to be fully operational in all three duty stations by the end of this year. These and other technical measures will allow the Tribunal to work even more efficiently, with the potential of further reducing the time needed to decide a case.

Concerning the work of the UNAT we are somewhat concerned about the relatively high number of decisions and judgments by the UNDT that get appealed to the UNAT, two-thirds of them by staff, about one third on behalf of the SG, with markedly different success rates. The judges of the UNAT ring the alarm bell by stating that the steady influx of new cases – if nothing is done - will push the new system into crisis. We fully agree with UNAT's position that an accumulation of a backlog of appeals which plagued the old system needs to be avoided.

We haveconsistentlystressed that the entire system should be consistent with a number of fundamental principles of rule of law and due process, including the right to an effective remedy, equal access to justice and the right to be heard.

Turning now to some specific open issues addressed in the Secretary-General's report A/68/346, the EU would like to state the following:

As regards the interim assessment, we consider that it would call for, inter alia, a thorough analysis not only of the managerial functioning of the tribunals, but also of their jurisprudence and working methods under the statutes and the rules of procedure. This is a demanding task for which legal expertise and sufficient time will be needed, with a view to finding solutions to address this issue.On the whole we welcome any measures that would strengthen the system of administration of justice and improve its effectiveness, and we are of the view that theproposed terms of reference adequately reflect the relevant operational aspects to be examined. We would like to request additional information from the Secretariat, however, on how the entity is supposed to measure the "cost effectiveness of the formal system", and why other factors such as the degree of satisfaction of those who are supposed to utilize the new system, i.e. the UN staff, or ways to contain the submission of frivolous complaints, do not form part of the mandate for the interim assessment.

Wereiterate our readiness to discuss a code of conduct for legal representatives, to be prepared by the organs suggested by the Secretary-General in his report. We see merit in the view expressed by both the IJC and the judges of the UNDT that there should be a common, or unified, code for *all* counsels who appear before the Tribunals. The fact that the conduct of staff

members who happen to represent applicants, either as OSLA staff or otherwise, is already covered by the Staff Regulations, may not provide sufficient guarantees. As the IJC has underlined, the Staff Regulations are not easy to apply by the Tribunal in the very specific context of judicial proceedings, where a counsel owes duties to both his client and the Tribunal. Such a situation was clearly not foreseen when the Regulations were formulated. We welcome that the Secretariat has started its work on a draft and plans to consult with stakeholders, and we look forward to its early submission.

On the issue of moral damages, or compensation for non-pecuniary losses, we thank the SG for the summary of the practice of the UNDT and the UNAT. We take careful note of the principles developed by the UNAT in its jurisprudence over the past four years which seem to be in line with those of many other national legislations and the practice of other international administrative tribunals. These figures deserve very careful consideration, in particular with regard to statistical "median" figures.

Concerning the Report of the Internal Justice Council, we would first of all like to congratulate the new members of the Council on their appointment; we look forward to working with them. The IJC has an important function in ensuring the independence, professionalism and accountability in the system of administration of justice. A functioning Council is, as the GA said in last year's resolution on administration of justice, an indispensable control mechanism for the formal part of the system. The views and the advice provided by the Council to the General Assembly are essential for the proper maintenance and improvement of the system, which is why they merit careful consideration. We welcome the long-term work program which the Council has laid out for the remainder of its term of office until 2016.

We also take note of the IJC's remark that a number of problems that the system currently faces are not legal in nature, but can be addressed through technical or administrative measures. We consider that the concrete proposals made by the Council also have a legal dimension.

Concerning the status of the judges we see merit in the proposal of the IJC – which is supported by the judges of the UNAT - to ensure that they be accorded full diplomatic immunities as provided in section 19 of the General Convention on Privileges and Immunities, for the reasons outlined very convincingly in the Report.

We also thank the IJC for its proposals concerning the qualification of judges at the UN Appeals Tribunal. The IJC suggests an amendment of the relevant parts of the UNAT statute so as to broaden the experience and particular knowledge on the UNAT's bench. We recall that this issue was already briefly discussed at our previous session in 2012, and that the Sixth Committee had decided to leave the statutes untouched for the time being. But we are of course open to discuss

the new set of proposal at this session, and look forward to hearing the views of other delegations.

As to the issue of taking measures against abuse of proceedings which the GA raised in resolution 67/241, we thank the IJC for its very thoughtful analysis of the current practice of both Tribunals. We note the IJC's conclusion that until now the absence of a comprehensive definition of the term "abuse of proceedings" has not created any difficulties, as the judges have handled these issues carefully and according to the practical needs of each individual case. Concerning further practical measures to reduce abuse of proceedings, the three options submitted by the Council look interesting.

We commend the staff of OSLA to whom staff members turn for advice and whose counsel helps to avoid mistakes and misunderstandings, and ultimately a lot of unnecessary work. OSLA is, in the words of the SG's report, an important "filter" in the system. We strongly support the call by both the IJC and the judges of the UNDT that OSLA be allowed to continue to represent staff in the proceedings before the Tribunals.

On the issue of the legal protection of non-staff personnel, we favor a differentiated system that provides an adequate, effective and appropriate remedy.
Finally, we welcome the preparation of the Secretary-General's bulletin on accessibility for persons with disabilities at the United Nations and we are confident that it will contribute to inclusive and accessible working environment.

I thank you Mr. Chairman.